Applicant : Jan Ryderstam et al.
Appln. No. : 10/694,167
Page : 2

REMARKS

Claims 1-20 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

Claims 13-20 have been indicated as being allowed and claims 2, 6, 7 and 9-12 have been indicated as being allowable if rewritten into independent form including all of the limitations of the base claim and any intervening claims. Applicants would like to thank the Examiner for that indication.

Claim 1 has been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,699,248 to Nakagami et al. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 1 defines a method of controlling tractive force of a vehicle including, among other things, determining a tractive force request of a driver of the vehicle, determining an actual tractive force of the vehicle, and modifying the actual tractive force of the vehicle to be equal to the tractive force request.

The prior art of record does not disclose or suggest the above noted features of claim 1. Specifically, the Nakagami et al. '248 patent does not disclose modifying an actual tractive force of a vehicle to be equal to a tractive force request. According to the Office Action, the Nakagami et al. '248 patent discloses determining a corrective force request of a driver of a vehicle, determining an actual tractive force of the vehicle, and modifying the actual tractive force of the vehicle to be equal to the tractive force request at lines 44-50 of column 8 of the Nakagami et al. '248 patent. However, lines 44-50 of the Nakagami et al. '248 patent are drawn to determining the lift operation amount Q_1 for lifting or lowering the blade 7. Furthermore, the same section states that lifting or lowering the blade 7 according to the lift

amount Q_1 does not result in an actual tractive force being equal to a tractive force request. According to lines 45-50, "the lifting amount Q_1 for lifting or lowering the blade 7 such that the actual tractive force after correction F becomes coincident with the target tractive force Fo" (emphasis added). Furthermore, the Nakagami et al. '248 patent does not disclose anywhere else in the patent a step of modifying an actual tractive force of a vehicle to be equal to the tractive force request. Accordingly, claim 1 is not anticipated by the Nakagami et al. '248 patent.

Claims 1 and 8 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,151,357 to Gheordunescu et al. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

The prior art of record does not disclose or suggest the above noted features of claim 1. Specifically, the Gheordunescu et al. '537 patent is drawn to a method of predicting the performance of a theoretical motor vehicle. Therefore, the Gheordunescu et al. '537 patent does not disclose a vehicle, a driver of a vehicle, or a method of determining a tractive force request of a driver of a vehicle. Furthermore, the Gheordunescu et al. '537 patent does not disclose modifying an actual tractive force of a vehicle to be equal to a tractive force request. The Gheordunescu et al. '537 patent discloses a method of determining whether a hypothetical vehicle would "be able to provide the tractive force necessary at the wheels of a vehicle to meet the tractive force required under the designated conditions at various operating speeds." Accordingly, the Gheordunescu et al. '537 patent does not disclose modifying an actual tractive force of a vehicle to be equal to a tractive force request. Furthermore, once a vehicle is made using the results of the Gheordunescu et al. '537 patent, the Gheordunescu et al. '537 patent does not disclose a method of controlling tractive force of a vehicle including, among

other things, determining a tractive force request of a driver of the vehicle, determining an actual tractive force of the vehicle, or modifying the actual tractive force of the vehicle to be equal to the tractive force request. Accordingly, claim 1 is not anticipated by the Gheordunescu et al. '537 patent. Claims 2-12 depend from claim 1. While claims 2, 6, 7 and 9-12 have been indicated as being allowable, Applicants submit that claims 3-5 and 8 also define unobvious patentable subject matter since claim 1 defines unobvious patentable subject matter as discussed above. Accordingly, claims 1, 3-5 and 8 are in condition for allowance.

Claims 3-5 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Gheordunescu et al. '537 patent in view of U.S. Patent No. 5,711,025 to Eckert et al. The requirements for making a *prima facie* case of obviousness are described in MPEP §2143 as follows:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.
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> The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).
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> The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. *In re Fritch,* 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992); M.P.E.P. §2142. Applicants respectfully assert that the Examiner has not yet met the Examiner's burden of establishing a prima facie case of obviousness with respect to the rejected claims. Consequently, the Examiner's rejection of the subject claims is inappropriate, and should be withdrawn.

Claim 3 depends from claim 1 and further defines the step of determining the actual tractive force as comprising modeling the actual tractive force. First, claim 3 depends from claim 1, and since claim 1 defines unobvious patentable subject matter, claim 3 defines patentable subject matter. Second, there is no suggestion or motivation for combining the Eckert et al. '025 patent with the Gheordunescu et al. '537 patent as set forth in the Office Action. According to the Office Action, the Gheordunescu et al. '537 patent does not teach modeling the actual tractive force, but the Eckert et al. '025 patent teaches modeling the actual tractive force in Fig. 9. Therefore, according to the Office Action, it would have been obvious to one skilled in the art to "combine the aforementioned inventions in order to reach a limit when a driving stability control is to take place during braking." However, the Gheordunescu et al. '537 patent is drawn to a software simulation of a vehicle. Accordingly, the Gheordunescu et al. '537 patent would not include an actual tractive force of a vehicle because it does not include a vehicle. Therefore, there is no suggestion or motivation for adding features of a real life vehicle as disclosed in the Eckert et al. '025 patent to a simulation as disclosed in the Gheordunescu et al. '537 patent. Accordingly, claim 3 is in condition for allowance.

Claim 4 depends from claims 1 and 3, and further defines the step of modeling the actual tractive force as including modeling the actual tractive force as a function of at least one of vehicle speed, engine speed, engine temperature, transmission temperature and ambient temperature. First, claim 4 depends from claims 1 and 3, and since claims 1 and 3 define unobvious patentable subject matter as discussed above, claim 4 defines patentable subject matter. Second, there is no suggestion or motivation for combining the Gheordunescu et al. '537 patent and the Eckert et al. '025 patent as forth in the Office Action. According to the Office Action, the Gheordunescu et al. '537 patent does not teach modeling of an actual tractive force as a function of speed, but the Eckert et al. '025 patent teaches modeling of an actual tractive force as a function of speed in column 17. Therefore, according to the Office Action, it would have been obvious to one skilled in the art "to combine the aforementioned inventions in order to reach a limit when a driving stability control is to take place during braking." However, since the Gheordunescu et al. '537 patent does not include a vehicle,

Applicant : Jan Ryderstam et al.
Appln. No. : 10/694,167
Page : 6

there is no way to measure vehicle speed and therefore no suggestion or motivation for attempting to measure any such vehicle speed. Accordingly, claim 4 is in condition for allowance.

Claim 5 depends from claims 1, 3 and 4 and further defines the tractive force request as comprising a request for a percentage of maximum available tractive force of the vehicle. Claim 5 depends from claims 1, 3 and 4 and since claims 1, 3 and 4 define unobvious patentable subject matter as discussed above, claims 1, 3 and 4 define patentable subject matter. Accordingly, claim 5 is in condition for allowance.

All pending claims 1-20 are believed to be in condition for allowance, and a Notice of Allowability is therefore earnestly solicited.

Respectfully submitted,

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10/26/04
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